INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 56

PENNSYLVANIA RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN, PETITIONERS

v.

N. P. RYCHLIK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES OF AMERICA AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the District Court (R. 22) is reported at 128 F. Supp. 449. The opinion of the Court of Appeals (R. 39) is reported at 229 F. 2d 171.

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1956 (R. 44). The petition for a writ of certiorari was filed on April 4, 1956, and was granted on May 14, 1956 (R. 45). 351 U. S. 930. The Court, in granting a writ of certiorari, invited the Solicitor General to file a brief as *amicus curiae* (*ibid.*).

QUESTION PRESENTED

Section 2, Eleventh (a) of the Railway Labor Act authorizes any railroad and any labor organization duly designated as a representative of its employees to make an agreement requiring as a condition of continued employment that all employees become members of the labor organization representing their craft or class. Subsection (c) of Section 2, Eleventh provides that, in the case of operating employees, such membership requirement shall be satisfied if an employee is a member of any labor organization, "national in scope" and "organized in accordance with this Act," which admits members of his craft.

The question in the case which the United States will discuss is whether the unions to which subsection (c) refers are only those entitled to participate, pursuant to Section 3 of the Act, in selecting the employee members of the National Railroad Adjustment Board.

STATUTE INVOLVED

The relevant provisions of the Railway Labor Act (44 Stat. 577, as amended, 45 U. S. C. 151 *et seq.*) are set forth in Appendix B, *infra*, pp. 23–26.

STATEMENT

In passing Section 2, Eleventh of the Railway Labor Act in 1950 (45 U. S. C. 152, Eleventh, 64 Stat. 1238), Congress lifted the prohibition against union shop agreements which had been inserted in the Act in 1934 (Section 2, Fourth and Fifth, 48 Stat. 1186). Subsection (c) of Section 2, Eleventh, however, provides that the union membership requirement of any

union shop contract shall be satisfied as to any operating employee if he belongs to "any of the labor organizations, national in scope, organized in accordance with this Act" which admits members of his craft.

The Pennsylvania Railroad and the Brotherhood of Railroad Trainmen (the Brotherhood), bargaining representative for respondents, negotiated a union shop agreement in March, 1952, which incorporated the statutory limitations of coverage found in subsection (c). Shortly after, respondents resigned their memberships in the Brotherhood and became members of the United Railroad Operating Crafts (UROC) which they allegedly believed to be a union "national in scope." After being cited for non-compliance with the Brotherhood's union shop agreement, respondents received a hearing before their System Board of Adjustment,[1] but decision was postponed pending that Board's conclusive determination as to whether UROC was in fact national in scope. Respondents subsequently joined the Switchmen's Union of North America (the status of which as a union "national in scope" is undisputed) and applied unsuccessfully for readmission to the Brotherhood. The System Board later determined that membership in UROC did not constitute compliance with the union shop agreement (R. 17–18) and respondents' notice

[1] Section 3, Second, permits the establishment by mutual agreement of system, group or regional boards of adjustment to act in place of the National Railroad Adjustment Board. The instant carrier and the Brotherhood established such a System Board to resolve disputes arising under the union shop agreement, two of its four members to be selected by the Brotherhood and two by the carrier (R. 15).

of discharge (R. 18) based upon this determination followed.

In their complaint filed in the district court (W. D. N. Y.) respondents alleged that their discharge was in violation of Section 2, Eleventh, and charged that the System Board's determination could not be considered final and binding since the Brotherhood, which selected half of the Board's members, had been acting simultaneously as "accuser, [prosecutor], judge and jury * * *" (R. 8).

The district court granted the present petitioners' motions to dismiss for failure to state a cause of action and for lack of jurisdiction. The court held that the question whether the present respondents had complied with the union shop agreement by maintaining their memberships in properly qualified unions "was one for the proper determination in the first instance by the System Board of Adjustment" and that the composition of the Board did not, *per se,* invalidate that portion of the agreement giving it jurisdiction to resolve disputes arising under the union shop contract. The court refused, itself, to review the status of UROC on the ground that adequate administrative procedures for determining this status existed under Section 2, Ninth[2] and Section 3.[3]

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[2] This section appears to be plainly inapplicable since it deals with procedures before the Mediation Board in disputes between rival bargaining representatives of a particular craft.

[3] Section 3, First (f) provides for the resolution of disputes arising as to right of any "national labor organization" to participate in the election of labor members of the National Railroad Adjustment Board. Under this procedure, the labor organization makes the claim and if the Secretary of Labor finds merit in the

The Court of Appeals for the Second Circuit reversed and remanded to the district court for review of the System Board's decision that UROC was not national in scope. The court found that subsection (c) conferred on operating employees subject to union shop contracts a right to satisfy the union membership requirement of such contracts by belonging to any union that is, in fact, national in scope and organized in accordance with the Act (R. 43). The court held that while the System Board had jurisdiction over disputes between the union and its members (citing *UROC* v. *Wyer,* 205 F. 2d 153), its decision here was subject to review because of the presumed bias in a tribunal half of whose members have active interests in direct conflict with those being asserted. The court held that respondents were entitled to judicial review because the administrative remedy of Section 3, First (f) (see note 3, *supra*), provided inadequate relief for an employee asserting his rights under Section 2, Eleventh (c). The principal reasons were that unions must fulfill requirements other than being "national in scope" to qualify as Adjustment Board electors; that the special board of three provided for in Section 3, First (f) could rule on a union's status as an elector without deciding whether it is "national in scope"; and that only the union and not an indi-

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claim, he directs the Mediation Board to call a panel of three members—one designated by already qualified unions, one by the claimant union, and a neutral designated by the Mediation Board. This special board of three decides whether the claimant "* * * was organized in accordance with section 2 and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board."

vidual employee could invoke and pursue this remedy (R. 42–44).

ARGUMENT

This is the second time a federal court has been asked to review an administrative determination that a labor organization is not within the meaning of Section 2, Eleventh (c) of the Railway Labor Act.[4] The opinion below rests on the assumption that the statute guarantees to each operating employee an absolute right to refrain from joining the union designated as bargaining representative of his craft, so long as he maintains membership in any other labor organization that is, as a matter of fact, "national in scope" and "organized in accordance with this Act." In the one other direct decision on this point, *Pigott* v. *Detroit, Toledo and Ironton R. Co.*, 221 F. 2d 736, the Court of Appeals for the Sixth Circuit at least tacitly assumed the existence of this right and the dissenting opinion rests squarely on such an assump-

[4] Where railroad employees, threatened with discharge under union shop agreements, have sought judicial relief before resorting to any administrative procedure the courts have uniformly held that the status of the alternate union involves a question of interpreting and applying a collective bargaining agreement, and hence falls within the exclusive primary jurisdiction of either the National Railroad Adjustment Board or a System Board. *UROC* v. *Wyer*, 115 F. Supp. 359, affirmed 205 F. 2d 153 (C. A. 2), certiorari denied 347 U. S. 929; *Alabaugh* v. *B. & O. R. Co.*, 125 F. Supp. 401, affirmed 222 F. 2d 861 (C. A. 4); *UROC* v. *Penn R. Co.*, 212 F. 2d 938 (C. A. 7), certiorari denied 347 U. S. 929; *Johns* v. *B. & O. R. Co.*, 118 F. Supp. 317 (3 judge court), affirmed 347 U. S. 964; *Bohnen* v. *B. & O. Chicago Term. R. Co.*, 125 F. Supp. 463 (N. D. Ind.); *UROC* v. *Nor. Pac. Ry. Co.*, 208 F. 2d 135 (C. A. 9), certiorari denied 347 U. S. 929.

tion.[5] If it is assumed that such a "right" exists, the only issue is whether the administrative procedures of Section 3 provide an employee with a proper tribunal for determining if his alternative union, in fact, meets these requirements. The Court below held that the tribunal provided in Section 3 was not proper;[6] the Court of Appeals for the Sixth Circuit held that it was.

The United States submits that the questions of remedy and of jurisdiction do not arise in this case for the reason that UROC, on the facts standing admitted, is not within the meaning of Section 2, Eleventh (c) as a matter of law. In our view the individual employee is given no "right" to avoid his union shop membership requirements by belonging to alternative unions. The "right" implicit in subsection (c) is conferred instead on the qualified operating unions themselves. This is the right to offer

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[5] "Their right not to be deprived of [their livelihood] * * * if U. R. O. C. comes within the classification of Section 152, Eleventh, (c) is a valid statutory right * * *. It is a right which should be protected by the examination of a court." 221 F. 2d at 743.

[6] Having found the System Board biased, the court below held that the special three-man board procedure of § 153, First (f) was an inadequate remedy since:

"* * * we can see no justification for forcing them to accept that union as a surrogate to assert their right * * * their jobs are dependent only upon whether the 'competing' union is in fact 'national in scope'; and the Act should be construed to grant them the personal privilege of proving their right before an impartial tribunal * * *." (R. 43); "* * * there is a public interest in the impartial protection of any rights granted by an Act of Congress that transcends the immunity of labor disputes from all surveillance by a court of law." (R. 44).

protection from the requirement of dual unionism to those of its members who are working in a craft for which another union has been designated bargaining representative but who desire to keep their membership in the union possessed of this "right". This right is not possessed by any labor organization that may be, as a matter of fact, "national in scope" but only by those unions which have qualified as "national in scope and organized in accordance with Section 2" for the purpose of electing labor members of the National Railroad Adjustment Board under Section 3 of the Act. We thus urge that the statute be interpreted as it was by the district court in the *Pigott* case, 116 F. Supp. 949 (E. D. Mich.):

> Under the Act, plaintiffs are not entitled to their seniority or their employment unless they belong either to the Brotherhood or to another union which has qualified, pursuant to the procedure provided in Section 153 for the exception to the union shop requirement. Since the complaint fails to allege that U. R. O. C. has so qualified, plaintiffs' membership in that labor organization does not preserve any right, the protection of which justifies the intervention of this Court. 116 F. Supp. at 957–958.

If subsection (c) stated simply that the requirement of membership shall be satisfied by membership in "any other labor organization national in scope," the plain meaning of such language might require the interpretation placed on it by the court below. See *Ex Parte Collett,* 337 U. S. 55, 61; *Packard Motor Car Co.* v. *National Labor Relations Board,* 330 U. S.

485, 492. But the language adopted in the statute is more extensive than that:

> The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to [operating employees] * * * if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said [operating] services.

To give meaning to this expanded language, and to determine what labor organizations were intended to be included, it is not only appropriate but necessary to refer to other sections of the Act and to the legislative history of subsection (c) itself. *United States* v. *American Trucking Associations,* 310 U. S. 534, 544.

1. Almost the identical language is found in Section 3 of the Act, establishing the National Railroad Adjustment Board. Section 3, First (a) provides that half of the Board's thirty-six members shall be selected "by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act." Disputes over the application of this language to particular unions were left to the special administrative machinery established in subsection (f) of Section 3, First (see note 3, *supra*).[7]

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[7] At least one aspect of the words "organized in accordance with" Section 2 of the Act is that the union be freely organized, as distinguished from company dominated. The Secretary of Labor, in three cases arising under the procedure of Section 3, First (f),

This solution is consistent with the general purpose underlying the Railway Labor Act to provide effective administrative remedies for the adjustment of labor disputes in the railroad industry. See *Slocum* v. *Del., L. & W. R. Co.*, 339 U. S. 239, 249. That the general objective applies with equal force to disputes arising under Section 2, Eleventh of the Act is made clear by the views expressed by the National Mediation Board in a letter addressed to the Solicitor General, set forth in the Appendix, *infra*, at pp. 19–22. Thus, the district court in the *Pigott* case, having considered the similarity of language and purpose, found "a compelling inference that, when the identical qualifications of Section [3] were incorporated into Section [2], Eleventh, the drafters of this amendment also had the administrative procedure of Section [3] for determining these qualifications clearly in mind." 116 F. Supp. 949 at 952. In other words, until a labor organization meets the requirements of Section 3—and where there is a dispute, resolves it through the machinery of Section 3, First (f)—it is not the kind of labor organization to which Section 2, Eleventh (c) refers, and an employee is only protected from the membership requirements of a union shop agreement when he belongs to a labor organization which has qualified to participate in National Adjustment Board elections.

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equated this statutory provision with "freely organized," and noted in each case that the "freely organized" character of the claimant union was not disputed. U. S. Department of Labor, Decisions of the Secretary, In the Matters of United Transport Service Employees of America (January 2, 1947); Brotherhood of Sleeping Car Porters (September 8, 1948); American Railway Supervisors Association, Inc. (September 8, 1953).

2. This interpretation is confirmed by examination of the legislative history of subsection (c). The stated purpose of the bill (S. 3295, 81st Cong., 2d Sess.) that became Section 2, Eleventh—the union shop amendment—was to permit in the railroad industry, as had been permitted by Section 8 (a) (3) of the Taft-Hartley Act in other industries (29 U. S. C. 158 (a) (3)), the negotiation of union shop agreements aimed at ending the "free ride" of unaffiliated employees who were enjoying the fruit of collective bargaining without contributing to its cost. (See Sen. Rep. 2262 and H. Rep. 2811, 81st Cong., 2d Sess.)[8] But a difficulty peculiar to the railroad industry was revealed in the hearings on the bills. (Hearings, Senate Subcommittee on Railway Labor Act Amendments of Committee on Labor and Public Welfare; Hearings, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess.) Representatives of the operating crafts, while generally supporting the bill, expressed concern over the possibility that a member of one craft union would either have to abandon membership in his union or else carry dual membership when temporarily promoted (or demoted) to work in a craft represented by another union. (Senate Hearings, *supra,* pp. 18–19, 67–68; House Hearings, *supra,* pp. 31–33, 43, 78–82, 192.) Witnesses from the industrial unions, however, testified that this presented no problem for them since in their case all crafts are represented by a single union.

[8] The bill as approved by both House and Senate contained only subsections (a) and (b) in substantially the same form as is currently in the statute.

(See Senate Hearings, *supra*, p. 97; House Hearings, *supra*, p. 223).

After the Senate bill had been favorably reported, the committee in charge of the bill recommended on the floor an amendment which would add an additional proviso to subsection (a):

> *Provided further*, That no such agreement shall require membership in more than one labor organization. 96 Cong. Rec. 15735.

The purpose of this amendment was made explicit when the amendment was offered:

> This proviso was attached because some question was raised as to the status, under this bill, of employees who are temporarily promoted or demoted from one closely related craft or class to another. This practice, with minor exceptions, occurs only among the train- and engine-services employees. . . . It is the intention of this proviso to assure that in the case of such promotion or demotion . . . the employee involved shall not be deprived of his employment because of his failure or refusal to join the union representing the craft or class in which he is located if he retains his memberhip in the union representing the craft or class from which he has been transferred. 96 Cong. Rec. 15736.

No action was taken on this amendment, but three months later a substitute amendment was offered which had been drafted by the railroad brotherhoods. The passage of this amendment, these unions indicated, would make the entire bill acceptable to them. The language of this substitute is that of the present

subsection (c) and passed the Senate following an explanation that the only difference between the brotherhoods' amendment and the earlier committee amendment was that the former "spell out in much more detail the purposes of the committee amendment than did the committee amendment. But the intent and the purpose of the committee amendments and the amendments now before the Senate are exactly the same." 96 Cong. Rec. 16268.

It is evident that the only purpose of the amendment resulting in subsection (c) was to avoid compulsory dual unionism, to protect members of a union representing one craft from being compelled to join another union representing another craft when temporarily working at the other craft. It is equally clear that had the railroad industry been organized on an industrial basis, or had there been less intercraft movement among operating employees (who are the only employees covered by subsection (c)), there would have been no necessity for such a provision and the original bill, containing only subsections (a) and (b) would have passed without it. Such a bill would have permitted the negotiation of standard union shop contracts, such as are presently permitted under the Taft-Hartley Act, under which employees must join the union designated as bargaining representative for their craft or be subject to discharge. Cf. 96 Cong. Rec. 17055–17056.

At no time in the history of its passage was subsection (c) ever intended to provide employees with any blanket "right" to join unions other than the

bargaining representative of their craft, except to meet the particular problem of intercraft mobility among operating employees. If any personal "right" had been intended, there would have been no reason to discriminate between operating employees, who are granted, and non-operating employees, who are denied, the privilege of belonging to alternate unions. Nor is there any suggestion in this legislative history that Congress intended to benefit rising new unions by permitting them to recruit members from among employees who, without the subsection, would be compelled to maintain membership in the bargaining representative. The floor amendment resulting in subsection (c) was thus drafted by and urged by the unions representing the operating railroads crafts, and was clearly intended to meet the specific problem of intercraft movement.[9] In changing the reference from "any labor organization" to "any one of the labor organizations, national in scope, and organized in accordance with this Act," it is reasonable to presume that the draftsmen of the provision intended to cover the same organizations as were covered by Section 3 from which this language was taken. Since disputes over the status of an organization under Section 3 are resolved by the special three-man-board procedure of Section

[9] During debate on the bill, Senator Holland specifically asked whether industrial unions, such as the Transport Workers Union (CIO) were within the language of subsection (c). 96 Cong. Rec. 16324–16325, 16331. Proponents of the bill gave no direct answer to this question, but at no point in the debate was any distinction drawn between craft and industrial unions *per se*.

3, First (f), it is equally reasonable to assume that similar disputes over whether a union is within Section 2, Eleventh (c) were intended to be determined by the same mechanism. Only in this way would the same language define the same organizations, regardless of the section of the Act in which the definition is found.

3. The interpretation urged by the Government is underscored when consideration is given to the results that would follow if subsection (c) were interpreted as conferring a *right* upon operating employees to belong to any union, national in scope and organized according to the Act—not as the phrase is used in Section 3 but as federal courts might decide in particular cases.

First—the established unions, principal beneficiaries of the union shop amendment, would be subjected to a burden not contemplated when subsection (c) of the amendment was proposed. If every operating employee had the right to ask a federal court to decide if his alternate union is "national in scope" as an original question in each case, the existing bargaining representatives would be faced with endless litigation. The determination in one circuit, for example, that UROC is national in scope would not be *res judicata* on the question in any other circuit. Similarly a judicial determination that UROC did not qualify on one date would not bar an employee from seeking a ruling—even in the same court—that it was qualified on a different date. Even a decision by this Court that on a particular date UROC is qualified as an alternate union under Section 2 would not preclude the

special three-man Board under Section 3 from finding that it was not qualified to participate in Adjustment Board elections after that date. Similarly, a ruling by the special three-man board that UROC is not qualified to participate in Board elections would not preclude an employee from seeking to have the identical issue determined by a federal court under Section 2, Eleventh (c).

Second—the employees, fully as much as the brotherhoods, would be injured by this interpretation. Under the interpretation which we think correct—that only organizations qualified to participate in Adjustment Board elections are covered by subsection (c)—an employee will always know or can easily ascertain the unions to which he may belong as an alternative to his bargaining representative, namely, the current Adjustment Board participants. A new union, such as UROC, would have to seek certification as an elector by the procedure of Section 3, First (f) before it could qualify. This ruling would be prospective, uniform nationally, valid until withdrawn by the same procedure, and, most important, would be the ruling of an administrative body established to decide precisely this question. Thus, the decision below, while apparently protective of the employee, in reality would force him to resort to expensive and uncertain judicial procedures in order to belong to an alternate union. Even a certification by a special three-man board under Section 3 would be no absolute assurance that the union would also qualify under Section 2, Eleventh (c).

On the other hand, under our interpretation a union such as UROC which has not yet qualified as an elector under Section 3 suffers from a disadvantage vis-a-vis rival qualified brotherhoods that would not exist under conventional union shop agreements. The effect of subsection (c), as we believe it should be interpreted, is that when UROC is elected bargaining agent for a craft on a particular railroad, it may not compel members of a rival brotherhood to become dues-paying members of UROC, as it could if the subsection did not exist. When the brotherhood becomes the bargaining agent on that railroad, however, UROC members are compelled to join the brotherhood to retain their jobs. Consequently, when UROC is the "out" union, its members must pay dues to two unions in order both to keep their jobs and to continue supporting UROC, while members of the brotherhood, when it is the "out" union, can satisfy any union shop agreement—including ones negotiated by UROC—by maintaining their membership in the brotherhood alone.

Congress apparently concluded however that this comparative disadvantage was outweighed by the serious confusion, a potential source of strike-producing friction, that would result if subsection (c) were interpreted as conferring a judicially enforceable right on individual employees. UROC may at any time have this disadvantage removed by becoming a qualified elector under the procedures of Section 3, First (f),[10] thus becoming a labor organization

[10] The possible remedies for any malfunctioning of that administrative machinery are not at issue here.

membership in which will protect an employee from discharge under union shop contracts with the established brotherhoods.

CONCLUSION

Since UROC is not a labor organization "national in scope and organized in accordance with this Act" within the meaning of Section 2, Eleventh (c), the decision of the court below should be reversed.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

VICTOR R. HANSEN,
Assistant Attorney General.

FREDERICA S. BRENNEMAN,
Attorney.

OCTOBER 1956.

APPENDIX A

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington 25, D. C., September 19, 1956.

Honorable J. LEE RANKIN,
Solicitor General of the United States,
Department of Justice,
Washington, D. C.

DEAR MR. RANKIN: This is in further reply to your office's letter of July 23, 1956, with reference to the order of the Supreme Court granting petition for writ of certiorari in *Pennsylvania Railroad Co., et al.* v. *Rychlik*, No. 56, Oct. Term 1956.

Your letter states "The case presents questions as to the jurisdiction of a federal district court to review the merits of a decision of a System Board of Adjustment established pursuant to Section 3, Second, of the Railway Labor Act", and invited the views of this Board as to the policy considerations pertinent to the questions presented. It is from this point of view we are writing.

When Congress in 1934 amended the Railway Labor Act and provided for the establishment of the National Railroad Adjustment Board and for system and regional adjustment boards, it was making an effort to provide machinery to correct the then existing serious situation which was affecting the harmonious relations between management and labor in the railroad industry. At that time there was a substantial backlog of grievances, disputes concerning the

interpretation and application of collective bargaining agreements on the several railroads of the country. It is axiomatic to say that the prompt settlement of grievances is necessary to preserve good relations between the carriers and their employees. The failure to settle such may lead, and has led, to disturbances interfering with the transportation system of the country. Unfortunately, through the past twenty years, there has slowly been built up on the First Division of the National Railroad Adjustment Board a large backlog of cases. For several years this backlog has been in the neighborhood of approximately 3,000 cases, which represents a minimum of five years backlog based on the Board's normal productivity.

Because of this backlog on the First Division, organizations have been reluctant to take their cases to the Division and have sought a solution to the settlement of the grievance disputes by incorporating them into strike dockets. While the Railway Labor Act provides that disputes referable to the Adjustment Board are not subject to the jurisdiction of the National Mediation Board, nevertheless, in the face of a threatened strike the Board has taken jurisdiction under Section 5, First (b), of the Act. When it has so taken jurisdiction in its effort to settle the dispute, it has urged upon the parties the wisdom of establishing system boards of adjustment. Last year there were 42 such boards which handed down 3831 awards. At the close of the fiscal year June 30, 1956, there were pending and unsettled on the docket of the First Division of the National Railroad Adjustment Board 2958 cases. During the fiscal year ended June 30, 1955, the First Division disposed of 836 cases.

From these simple facts, it is very apparent that the provisions of the Act providing for the establish-

ment of system boards of adjustment, materially contributes to the peaceful adjustment of disputes in the railroad industry. If every case taken to a system board of adjustment is subject to review on its merits in the federal courts, two appalling results will follow. In the first instance, the courts may well be overwhelmed by requests to determine matters which are peculiar to the railroad industry and which an administrative board such as a system board of adjustment is peculiarly equipped to handle; and secondly, if these awards of system boards of adjustment are subject to review on their merits, the tendency will be for the dissatisfied party to seek court review, which will delay a final determination of the dispute. This delay in itself will discourage the parties from taking this kind of dispute to such boards. We hesitate to guess what course of action the organizations would then take to obtain a settlement of their grievances.

It was very obviously the intention of the Congress in enacting the Railway Labor Act, and its amendments in 1934, to provide that the carrier, on the one hand, would be subjected only to dealing with organizations national in scope and, on the other hand, the employees would have the advantage, if they so desired, of organizing themselves into organizations equipped to meet the problems throughout the length of even the largest railroad system. It appears to us that it is to the advantage of both that organizations representing crafts and classes in the railroad industry should in fact be national in scope. This does not prevent, however, any new group being organized. As was pointed out in Pigott v. Detroit, Toledo & Ironton, 221 F. 2d 736, there is an adequate method under the provisions of Section 3 of the Act for such group to establish the fact, if it is a fact, that it is national in

scope. If this feature of the law should have some cloud thrown over it, the carrier on the one hand would be confronted with a myriad of small organizations, which in itself would contribute to labor unrest.

We are submitting these observations for your consideration in connection with a brief, as amicus curiae, which you may desire to file in the instant case.

Sincerely yours,

S/ ROBERT O. BOYD,
Chairman.

APPENDIX B

STATUTES INVOLVED

The pertinent provisions of the Railway Labor Act (44 Stat. 577, as amended, 45 U. S. C. 151 *et seq.*) are as follows:

SEC. 2. * * *

* * * * *

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly

required as a condition of acquiring or retaining membership.

* * * * *

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to member-

ship employees of a craft or class in any of said services.

* * * * *

SEC. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

* * * * *

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in

accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.